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IN THE

Supreme Court of the United States

October Term, 1975
No. 73-1046

DAVID MATHEWS, Secretary of Health, Education and Welfare,

Appellant,

v.

SANTIAGO DIAZ, et al.,

Appellees.

On Appeal from the United States District Court for the Southern District of Florida

SUPPLEMENTAL BRIEF FOR LEGAL SERVICES FOR THE ELDERLY POOR AS AMICUS CURIAE

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POINT I

THIS COURT HAS JURISDICTION OVER BOTH THE NAMED PLAINTIFFS AND THE CLASS CERTIFIED BY THE LOWER COURT.

In its supplemental brief, the government relies on this Court's recent decision in Weinberger v. Salfi, 45 L.Ed. 2d 522 (1975) in an attempt to dispose of the class action aspects of the case. The government's reliance is misplaced, as the present action meets all the requirements for a class action which were set forth in Salfi.

As required by Salfi, the district court found it had jurisdiction over the present case under §205(g) of the Social Security Act, 42 U.S.C. §405(g). 361 F. Supp. 1, at 4. The district court considered whether the named plaintiffs had met the "final decision" requirement of §405(g). The court concluded, using the same reasoning employed by this Court in Salfi, that the initial denial of benefits

by the Social Security Administration was a sufficient final decision, as the exhaustion of administrative appeals would be futile. Id. at 5.

At this point, Salfi and the present case diverge. In Salfi, the Supreme Court decided that while it had jurisdiction over the named plaintiffs, it did not have jurisdiction over the class, because there were no allegations that the members of the class has met the "final decision of the Secretary" requirement of §405(g). 45 L.Ed.2d at 538. In the present case, the district court found that the named plaintiffs had satisfied the final decision requirement, 361 F.Supp. at 5, and went on to certify a class consisting of "[a]ll immigrants...who have been or will be denied enrollment...." Id. at 7 (emphasis added). While the court may now, in light of Salfi, be seen to lack jurisdiction over those who "will be" denied enrollment, certainly the class still exists as to those who by the

very definition of the class have had the appropriate "final" determination by the Secretary.

With respect to the other requirements of §405(g), namely, the 60-day statute of limitations and venue, the government has not raised them, and they must be considered waived. Salfi, supra, at 538. Thus the district court had jurisdiction over both the named plaintiffs and the class, insofar as it includes those immigrants who have been denied enrollment under 42 U.S.C. §1935o(2)(A)(ii).

In addition to the main class, the district court certified a subclass of "[a]ll immigrants lawfully admitted for permanent residence in the United States... who have been denied enrollment...solely because of their failure to meet the five-year continuous residency requirement...." 361 F.Supp. at 7. The named representative of this class is plaintiff Espinosa. Contrary to the government's arguments,

we believe that the district court had jurisdiction over Espinosa and the class he represents.

Espinosa filed his application for enrollment under Part B in October, 1972. By the time the district court handed down its opinion and order, in June, 1973, no decision had formally been made by the Social Security Administration. But the government conceded during oral argument that under 42 U.S.C. §1395o(2)(A)(ii) it would have to deny Espinosa's application, and, as the district court noted, it was under a ministerial obligation to do so. 361 F.Supp. at 7 n.7. At the same time, the government was operating under a stay issued prior to Espinosa's application which precluded their denial of benefits to him. Thus the government's concession that he would have been denied benefits was as much of a "final determination" as was available to Espinosa at the time, and must certainly be, in the light of the reasoning employed by

this Court in Salfi, see 45 L.Ed.2d at 539-40, a sufficient denial to confer jurisdiction under §405(g).

POINT II

THIS COURT'S DECISION IN WEINBERGER V. SALFI DOES NOT CONTROL THE ISSUES IN THIS CASE.

Appellants mistakenly apply this Court's decision in Weinberger v. Salfi, __ U.S. __, 95 S.Ct. __, 45 L.Ed.2d 522 (1975) and the cases relied upon therein: Flemming v. Nestor, 363 U.S. 603 (1960); Dandridge v. Williams, 397 U.S. 471 (1970); and Richardson v. Belcher, 404 U.S. 78 (1971), to the case at bar. Appellants do so solely because both cases involve social welfare legislation and "a non-contractural claim to receive funds from the public treasury...," Weinberger v. Salfi, 45 L.Ed.2d at 542.

Appellant's reliance is misplaced. The present case is so fundamentally distinct from Salfi that that decision is plainly inapposite.

Salfi involved a challenge to a statute which limited eligibility for

Social Security widows' and children's benefits to wives and stepchildren whose relationship to the deceased worker existed for more than nine months prior to the death of the worker. 42 U.S.C. §416(c)(5) and (e)(2).

The statute section was enacted as a prophylactic measure to "prevent exploitation of the fund by claims for benefits from persons who married beneficiaries solely to get wife's benefits." Weinberger v. Salfi, supra, 45 L.Ed.2d at 546, quoting H.R. Rep. No. 2526, 79th Cong., 2d Sess. 25; S.Rep. No. 1862, 79th Cong., 2d Sess. 33. The statute reflects "congressional concern with the possibility of relationships entered for the purpose of obtaining benefits" Weinberger v. Salfi, supra, 45 L.Ed.2d at 547. In other words, the statute section was enacted to prevent fraud.

This Court upheld the legislation challenged in Salfi because it found

that Congress could rationally have concluded that the statute "would protect against" the occurrence "of an abuse which it legitimately desired to avoid...." and "that the expense and other difficulties of individual determinations justified the inherent imprecision of a prophylactic rule." 45 L.Ed.2d at 546.

The eligibility restrictions questioned in the instant case make all aliens not lawfully admitted for permanent residence and residing in this country continuously for five years prior to application totally ineligible for Supplementary Medical Insurance Benefits. The restrictions here are not "prophylactic measures." Rather, they are eligibility criteria which, without apparent purpose, seek to deny benefits to some and grant them to others. The distinction is critical.

The legislative history of the statute at issue here is devoid of evidence of any congressional purpose in enacting the

legislation. Unlike Salfi, this statute does not reflect concern for any recognized abuse known to the collective mind of Congress.

Appellant offers three separate and unrelated legislative objectives to justify the legislation at issue. Without proof that such considerations were actually made, appellants assert the following "objectives": (1) "limiting the availability of subsidized health care to those with a substantial relationship to this country," (Appellant's Supplementary Brief, p. 87; (2) preventing "individuals who have neither contributed to the trust fund or to general tax funds during their working life" from receiving subsidized health care in their old age (App. Supp. Brief, p. 10); and (3) to discourage entry into the country "of those most likely to become welfare claimants " (App. Supp. Brief, p. 11).

As mentioned above the legislative

history of this statute is devoid of any suggestion that Congress envisioned the objectives appellant asserts. On the contrary, an examination of the history reveals that the primary concern of Congress in establishing the Supplementary Medical Insurance Program was to extend, not to limit, medical care to the large number of needy aged and disabled people in the nation. Congress particularly desired to expand the program to include those persons who were not eligible for aid under Part A of the Medicare Program which provides hospital insurance. Discussion in the bill consistently emphasized the plight of those in need. There was no mention of restrictions as to aliens. U.S. Code Cong. and Admin. News 1943 (1965) 4993 (1972).

In any case, the section in question is not rationally related to any of the goals suggested by Appellant. The restrictions questioned here do not achieve the goal of

limiting subsidized health care to those who have contributed to the trust fund or general tax funds. They clearly allow citizens who have never contributed to either fund to receive benefits while prohibiting aliens who have contributed to both funds from receiving benefits. If Congress has actually desired to exclude aliens who had not contributed from receiving Part B benefits, it could have done so with a narrower and more explicit classification.

Contrary to the assertion made by Appellant, there would be little "administrative difficulty" in determining whether an individual had contributed to the funds. A similar threshold determination is made every time an individual applies for Social Security benefits. Unlike the determinations foreseen in Salfi to which Appellant refers, a determination of contribution is totally objective and not based on evidence completely within the

knowledge and control of the applicant. Weinberger v. Salfi, supra, 45 L.Ed.2d at 549, n. 15.

As the statute exists now it is so imprecise that it is not rationally related to the alleged goal. Rather, it merely discriminates against aliens qua aliens.

The allegation of a legislative objective to limit subsidized health care to those with a "substantial relationship" to this country merely restates the congressional power to make legislative distinctions. The definition of alien status is a definition of the substantiality of the relationship of a non-citizen to the country. It is the very essence of this case to determine whether the congressional exercise of this power in this case violates the Equal Protection requirements of the Fifth Amendment, i.e., whether the objectives sought and the means used are a rational exercise of that power.

If "substantial relationship" means

anything more than this, this statute is so indirectly related to that vague objective as to be an irrational means to achieve it.

Citizens who have lived abroad their entire lives may receive benefits. At the same time the statute excludes from benefits a large number of individuals with a more "substantial relationship" to this country. Elderly aliens who have lived and worked here for periods longer than five years, and expect to spend the rest of their lives here, but were never admitted for permanent residence, are denied benefits despite their "substantial relationship."

It is inconceivable that Congress, were it so concerned with assuring that aliens had a substantial relationship to this country before they were eligible for subsidized health care, would have allowed such aliens to be eligible for medical assistance payments under the

Medical Assistance (Medicaid) program of the Social Security Act, 42 U.S.C. §§1382c(a)(1)(B)(ii) and 1396a(10). Far more substantial medical care is available under the Medicaid program than under Part B of Medicare.

Congress' action with regard to Medicaid indicates its concern with extending necessary medical aid to all needy and elderly persons residing lawfully within our country regardless of their status as aliens.

Appellant's suggestion that Congress sought by enacting these restrictions to discourage persons seeking welfare benefits and medical assistance from entering this country ignores the contrary presumption which must arise when congressional policy is exercised at the national door under the immigration laws 8 U.S.C. §1182(a)1-8 15.

In order for an alien to be eligible for admission to the United States the

Immigration and Naturalization Service must determine that the alien is not seeking entry for social welfare benefits and is not likely to become a public charge within five years of entering the United States. 8 U.S.C. §1182(a)(1-8), (15). An alien residing here who becomes a public charge within five years of entry from causes not affirmatively shown to have arisen after entry is deportable. 8 U.S.C. §1251(a)(8).

Thus, any presumption enforced by the statute in question here, that aliens residing here for less than five years or not permanent residents, come to this country for the purpose of receiving public benefits is directly contrary to facts established by the federal government itself under immigration law.

It is clear from an analysis of the alleged goals set forth by the Appellant that had Congress in fact intended any of these objectives it could have achieved

its purpose "by a more discriminately tailored statute which does not, like the present one sweep unnecessarily broadly, reaching far beyond the evil sought to be dealt with..." Griswold v. Connecticut, 381 U.S. 479, 498 (1965).

The point here is not that the statute in question is merely overinclusive or underinclusive. The point is that the statute serves so poorly to fulfil any goal which Congress might legitimately have sought, that it is not so rationally related to any such goal that it can be used to deny the Appellee's benefits available to those who satisfy the questioned test. Weinberger v. Salfi, 45 L.Ed.2d 522, 543.

POINT III

THE FACT THAT GOVERNMENT DISCRIMINATES AGAINST ALIENS IN OTHER STATUTES WILL NOT JUSTIFY THAT DISCRIMINATION IN THE PRESENT STATUTE.

The Constitution gives Congress the power to establish "an uniform Rule of Naturalization." U.S. Const., art. I, §8, cl. 4. In the exercise of this power, the Congress is subject to the limitations imposed by the Bill of Rights. The Due Process Clause of the Fifth Amendment secures to all persons the right of equal protection of the laws. Weinberger v. Weisenfeld, 43 L.Ed.2d 514, 521 (1975); Schlesinger v. Ballard, 42 L.Ed.2d 610, 613 n.3 (1975); Jiminez v. Weinberger, 417 U.S. 628, 637 (1974); Bolling v. Sharpe, 347 U.S. 497, 499 (1954). An alien is a "person" within the meaning of the Fifth Amendment. Wong Wing v. United States, 163 U.S. 228, 238 (1896). This Court has approached Fifth Amendment equal

protection claims in the same manner as it has approached Fourteenth Amendment equal protection claims. Weinberger v. Wiesenfeld, supra, at 519 n.2, and cases cited therein.

This Court has further held that the Equal Protection Clause of the Fourteenth Amendment prohibits a state from discriminating against aliens in social welfare programs, Graham v. Richardson, 403 U.S. 365 (1971), and in public service employment, Sugarman v. Dougall, 413 U.S. 634 (1973).

The same standard that applies to the determination of equal protection of state laws should also apply to the determination of Federal Laws under the Fifth Amendment. The government argues in this case, and its companion case, Hampton v. Mow Sun Wong, No. 73-1596, that because the Congress has the exclusive power to "fix the conditions under which aliens are to be permitted to enter and remain in this country," it may discriminate against aliens where the

states may not. This claim may only be substantiated if the Court finds a stronger Federal government interest in discriminating against aliens in social welfare legislation than state governments have. The government has not demonstrated such an interest.

Rather, in support of its position, the government presents twenty-five printed pages of United States Code provisions wherein the Congress has allegedly discriminated against aliens. Appendix, Brief for Petitioners, Hampton v. Mow Sun Wong, No. 73-1596. Even a cursory examination of the statutes cited reveals that they do not support the government's position. As detailed more fully in the Appendix, the statutes presented fall within certain broad categories. The assignment of the statutes to these categories is based on easily-perceived congressional objectives. We are not concerned with whether or not a particular

statute is a "rational means" to achieve that objective. Many of them do not discriminate but merely distinguish citizens from aliens. As will be seen, in only a few of the statutes presented does Congress discriminate between citizens and aliens for even remotely the same purposes as it does in the statute under challenge in the present case.

The first broad category may be labelled "foreign affairs." It recognizes the powers and obligations of the federal government in the area of foreign affairs, and the bi-national and international law aspects of alienage. This category may be further subdivided as follows:

A. the conduct of foreign affairs;

B. treaties and reciprocal agreements;

C. the regulation of activity outside of the United States; and

D. foreign trade.

This Court has always recognized

this category of foreign affairs as one distinct and subject to different considerations from those operative in the area of domestic affairs. See, e.g., United States v. Curtiss-Wright Export Corp., 299 U.S. 304, 318 (1936).

The second broad category is labelled "national security." While we are not arguing that the distinctions made in the statutes in this group are either valid or invalid, it is possible that the national security aspects may provide the powerful federal interest necessary to meet the due process requirements of the Fifth Amendment. See, e.g., Cafeteria and Restaurant Workers Union v. McElroy, 367 U.S. 886 (1961). This category may be further subdivided as follows:

A. the Armed Forces and national defense;

B. the protection of resources: land, natural resources, capital, power, talent, etc.; and

C. the protection of vital services: banking, shipping, communications, airways and railways.

A third category, which might be labelled "attributes of citizenship," derives from the peculiar character of alienage itself. The statutes in this category deal with voting, elected officials, juries and federal court jurisdiction.

The fourth category is best entitled "Miscellaneous." In these statutes, the rational basis for discriminating against aliens is difficult to perceive. We have subdivided this group as follows:

A. patriotic and honorary positions;

B. civil service positions;

C. due process statutes;

D. social welfare statutes; and

E. miscellaneous unclassifiable statutes.

The statute challenged in the present

action falls within this fourth category. The statutes in this category represent only a small fraction of those presented by the government, and they are the most difficult to justify objectively. They may be arbitrary exercises of congressional power; they may be reasonable. Whether the use of this distinction, alienage, in these statutes is so arbitrary as to be irrational, in contravention of equal protection, can only be determined in the application of the statutes in particular cases. The mere fact that one statute might be a valid exercise of power cannot of itself justify discrimination in another, unrelated statute.

Equal protection requires at the absolute minimum a rational basis for any classification made by law. See Railway Express Agency v. New York, 336 U.S. 106 (1949) (Jackson, J., concurring). Where a "suspect class" such as aliens is being discriminated against, the government's

action must come under the strictest judicial scrutiny. Korematsu v. United States, 323 U.S. 214, 216 (1944).

The fact that the government can cite a hundred unrelated statutes which authorize discrimination against aliens cannot justify discrimination in any individual case. The plaintiffs could cite a hundred times as many statutes which do not discriminate between aliens and citizens: would that justify this Court's holding that Congress may never discriminate against aliens? This Court has held that there is no rational basis for a state's discriminating against aliens with regard to social welfare and public service employment; it cannot held the federal government to a lesser standard.

The federal government should exercise its powers over immigration and naturalization at the doorstep. For example, if it wishes to discourage aliens from entering the country to take advantage of

our welfare programs, it may do so in the immigration laws. See 8 U.S.C. §1182(a). If it is concerned with protecting employment opportunities for American citizens, it may limit the number of people it lets in. See 8 U.S.C. §1152. The Congress should not admit people into this country and then deny them the opportunity to secure medical care or employment. Once they are admitted to the country, the Constitution requires their equal treatment.

CONCLUSION

For the foregoing reasons, as as well the reasons set forth in our main brief, the judgment of the district court should be affirmed.

Respectfully submitted,

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APPENDIX

I. FOREIGN AFFAIRS

A. Conduct of Foreign Affairs

Title 22, Foreign Relations and Intercourse:

Sec. 287n. U.S. representatives to the General Conference of UNESCO must be citizens.

Sec. 287p. Members of the National Commission on Educational, Scientific, and Cultural Cooperation must be citizens.

Sec. 526. Secretaries of Army and Navy shall protect patent rights of citizens in sales of war materials.

Sec. 816. Secretary of State may establish educational facilities for children of certain citizens stationed overseas.

Sec. 910. Foreign Service Officers must be citizens.

Sec. 922. Foreign Service Reserve Officers must be citizens.

Sec. 939. Foreign Service Staff Officers and employees must be citizens.

Sec. 1044. Secretary of State may employ non-citizens in Foreign Service Institute only in absence of suitably qualified citizens.

Sec. 1131. Secretary of State authorized to grant citizen officers and employees of Foreign Service certain representation allowances.

Sec. 1156. Secretary of State may authorize payments of certain medical expenses for citizen officers, employees, and their dependents stationed abroad.

Sec. 1157. Secretary of State may authorize payment of travel expenses in connection with medical treatment involving citizen Foreign Service officers, employees, and dependents stationed abroad.

Sec. 1158. Secretary of State shall provide for certain physical

examinations of citizen Foreign Service officers, employees, and dependents stationed abroad.

Sec. 1177. Citizens dying abroad entitled to consular assistance following testamentary directions.

Sec. 1198. Consular officers liable for embezzlement of certain funds of citizens.

Sec. 1321, et seq. Certain citizens given non-quota immigrant status and other rights in Philippines.

Sec. 1448. Secretary of State may provide assistance to certain overseas institutions founded or sponsored by citizens.

Sec. 1451. Secretary of State may assign certain citizen employees to work with foreign governments.

Sec. 1471. Secretary of State may hire certain aliens only when qualified citizens unavailable.

Sec. 1631g. Certain debt claims may

be made only by citizens.

Sec. 1641. Aliens denied access to certain claims funds.

Sec. 1796. Members of Joint Commission on Rural Reconstruction in China must be citizens.

Sec. 2103. President may appoint certain committees, composed only of citizens, to provide for international cooperation in health and medical research.

Sec. 2174. President may furnish certain assistance to schools, libraries, and hospital services overseas, if founded or sponsored by citizens.

Sec. 2198. Eligible investors in Overseas Private Investment Corporation generally limited to citizens or corporation controlled by citizens.

Sec. 2281. Joint Commissions on Rural Development to be composed of one

or more citizens.

Sec. 2351. President shall assist citizens in obtaining just compensation for certain losses incurred in the course of international trade.

Sec. 2370. Assistance to certain foreign countries restricted where rights of citizens have been prejudiced.

Sec. 2385. President may appoint a citizen to the Inter-American Committee on the Alliance for Progress.

Sec. 2391. Chairman of Development Assistance Committee must be a citizen.

Sec. 2504. President may enroll citizens and nationals as Peace Corps "volunteers" for service abroad.

Sec. 2505. Peace Corps "volunteer leaders" must be citizens or

nationals.

Sec. 2670. Secretary of State may pay costs involved in rescue of certain citizens.

B. Treaty and Reciprocity

Title 15:

Sec. 1124. Protects citizens from importation into U.S. of certain goods bearing infringing trademarks.

Sec. 1126. Citizens and nationals of foreign countries extending reciprocal rights entitled to certain trademark protection benefits.

Title 16:

Sec. 1052. Educational and scientific facilities of National Fisheries Center and Aquarium available to aliens in certain cases only if reciprocity.

Sec. 1106. Only U.S. and Canadian citizens may be employees of Joint United States-Canadian Commission.

Title 19:

Sec. 1526. Protects citizens against trademark infringement.

Title 26:

Secs. 891, 896. Permits multiple taxation of aliens whose countries discriminate against U.S. citizens.

Sec. 2014. Credit for foreign death taxes available to aliens only if reciprocity.

Title 28:

Sec. 2502. Aliens may prosecute actions in Court of Claims only if they establish reciprocity as a jurisdictional prerequisite.

Title 49:

Sec. 1422. Administrator of Civil

Aeronautics Board has discretion to prohibit or restrict issuance of airman certificates to aliens dependent on terms of reciprocal agreements entered into with foreign governments.

C. Regulation of Activities Outside United States and Its Possessions

Title 5:

Sec. 5912. Citizen employees stationed in foreign countries eligible for free use of Government owned or rented quarters.

Sec. 5922. Citizen employees stationed in foreign areas may be authorized certain allowances and differentials.

Sec. 5924. Dependents of citizen employees stationed in Canal Zone authorized certain allowances in connection with travel to and from U.S. schools.

Sec. 8339. Affords certain citizens

advantages in computation of annuity upon civil service retirement.

Title 7:

Sec. 1158. Citizens only entitled to indirect protection against foreign expropriation of property.

Title 19:

Sec. 1586. Prohibition against unloading vessel within specified off-shore waters applicable only to citizens.

Title 26:

Sec. 911. Only citizens qualify for certain exemptions on income earned without the U.S.

Title 31:

Sec. 492a. Disbursing officers in foreign countries authorized to cash checks drawn on the Treasurer of the United States for the

accommodation of citizens only.

Title 38:

Sec. 235. Citizen employees of the Veterans Administration assigned to Philippines and Europe entitled to certain allowances and benefits.

Sec. 624. Only citizen veterans eligible for certain medical services abroad.

Title 42:

Sec. 1313. Only destitute citizens and dependents thereof entitled to receive temporary assistance upon return to U.S. from foreign countries.

D. Foreign Trade

Title 7:

Sec. 1704. Authorizes sale of foreign currencies for dollars to citizens for certain purposes.

Title 19:

Sec. 1330. Membership on U.S. Tariff Commission limited to citizens.

Title 15:

Sec. 144. Majority of incorporators of China Trade Act corporation must be citizens.

Sec. 149. Majority of directors of China Trade Act corporation must be citizens.

Title 26:

Sec. 941. China Trade Act corporations eligible for special deduction from taxable income for certain shares held by citizens.

II. NATIONAL SECURITY

A. Armed Forces, Defense, Etc.

Title 10:

Sec. 311. Membership in militia restricted to citizens or those declaring intent to become same.

Sec. 1486. Secretaries of military services may authorize use of U.S. mortuary services, on reimbursable basis, to certain citizens dying abroad.

Sec. 2101, et seq. Participation in certain Reserve Officer Training programs restricted to citizens.

Sec. 2272. Secretaries of military departments precluded from awarding contracts in aircraft design competition to other than citizens.

Sec. 2279. Employment of aliens by contractors engaged in aircraft

or aircraft parts production for the United States restricted.

Secs. 2668, 2669. Secretaries of military departments authorized to grant citizens certain easements for rights-of-way with respect to public lands withdrawn or reserved for use of such departments.

Sec. 2734. Aliens and foreign states or their political subdivisions may assert tort claims against U.S. in certain cases where citizens may not.

Sec. 3253. Aliens may enlist in Army only subject to certain restrictions.

Sec. 3285. Original appointments in Regular Army limited to citizens.

Sec. 3294. Medical and Dental Corps officers in Regular Army must be citizens.

Sec. 4308. Citizens only eligible for certain marksmanship instruction.

Sec. 5571. Citizenship a prerequisite for appointment as an officer in Regular Navy or Marine Corps.

Sec. 6019. Officers of vessels of the United States must be citizens.

Sec. 6909. Citizenship a prerequisite for certain direct officer procurement programs.

Sec. 6911. Citizenship a prerequisite for enlistment as naval aviation cadet.

Sec. 7435. Aliens may be denied interest in certain U.S. naval fuel reserves, unless foreign country grants reciprocal rights to U.S. citizens.

Sec. 8253. Aliens must meet additional requirements for enlistment in Air Force.

Sec. 8257. Citizenship necessary for qualification as Regular Air Force aviation cadet.

Sec. 8285. Citizenship necessary for commission in Regular Air Force.

Sec. 8294. Citizenship necessary for commission as officer in Regular Air Force as medical or dental officer.

Title 14:

Sec. 371. Citizenship necessary for enlistment as Coast Guard aviation cadet.

Sec. 823. Coast Guard Auxiliary shall be composed of citizens.

Title 32:

Sec. 313. Officers in National Guard must be citizens.

Title 38:

Sec. 1502. Veterans eligible for certain vocational rehabilitation only if they were citizens at the time of service.

Title 41:

Sec. 49. Defense contractors required to accept certificate of honorable discharge from U.S. armed forces as equivalent to birth certificate, except in case of aliens.

Title 42:

Sec . 417(h). Only citizens shall be considered World War II veterans for purposes of certain benefits.

Title 50:

Sec. 855. Aliens trained in foreign espionage system subject to deportation for failure to register with the Attorney General.

App. Sec. 5. Property owned by aliens subject to freezing or vesting in times of war or national emergency.

App. Sec. 10. Only citizens may apply to President for license to use enemy patents.

App. Sec. 12. Alien Property Custodian may sell vested property to citizens only.

App. Sec. 454. Liability for military training and service limited to citizens and aliens admitted for permanent residence.

App. Sec. 460. Members of Selective Service boards must be citizens.

App. Sec. 572. Certain benefits available to citizens serving with war allies of U.S.

App. Sec. 2004. Payment of detention benefits authorized only to certain citizens captured by Japanese Government during World War II.

App. Sec. 2014. Compensation authorized for certain citizens serving in allied forces and captured by enemy.

App. Sec. 2015. Citizen merchant seamen eligible for detention benefits arising out of World War II.

App. Sec. 2017. Only citizens and nationals proper claimants before Foreign Claims Settlement Commission.

App. Sec. 2272. Members of Civil Defense Advisory Council must be citizens.

B. Protection of Resources (Land, Minerals, Power, Capital, Talent, Etc.)

Title 7:

Sec. 1922. Secretary of Agriculture authorized to make certain real estate loans only to farmers and ranchers who are citizens.

Sec. 1941. Secretary of Agriculture authorized to make certain operating loans only to farmers and ranchers who are citizens.

Sec. 1961. Secretary of Agriculture authorized to make certain emergency loans only to farmers,

ranchers, or oyster planters who are citizens.*

Title 16:

Sec. 5. Citizens eligible for certain rights-of-way through public lands for power and communications facilities.

Sec. 420. Only citizens eligible for power and communication facility rights-of-way through certain military parks.

Sec. 522, et seq. Only citizens and U.S. corporations and associations eligible for certain rights-of-way through National Forests for electrical plants, mining, etc.

Sec. 554. Forest supervisors and rangers must be selected from among qualified citizens of the States

*Declared unconstitutional in Cabrera v. Butz, D.P.R., Civ. No. 326 (3-judge court), appeal to the Supreme Court noted.

or Territories in which national forests are located.

Sec. 715k. Reservation protectors must be selected, when practicable, from qualified citizens of State in which to be employed.

Sec. 742c. Only citizen or national eligible for fishery loan.

Sec. 781. Aliens not included in prohibition against certain fishing beyond state territorial limits.

Sec. 797. Only citizens eligible for certain loans from Federal Power Commission.

Sec. 831a. Only citizens may be members of board of directors of Tennessee Valley Authority.

Title 25:

Sec. 399. Lease of unallotted mineral lands within Indian reservations available to citizens.

Title 26:

Sec. 931. Citizens and domestic corporations qualify for certain exemptions on income derived from sources within U.S. possessions.

Sec. 981. Only citizens may elect to receive certain benefits as to treatment of income subject to foreign community property laws.

Sec. 6851. Alien may not generally depart the U.S. unless he first procures a certification that he has complied with all obligations imposed upon him by the income tax laws.

Title 30:

Sec. 22. Mineral deposits on U.S. owned lands open to exploration and purchase only by citizens and those declaring intent to become same.

Sec. 49a. Only citizens, and those

declaring intent to become same, obtain benefit of U.S. mining laws as made applicable to Alaska.

Sec. 71. Only citizens, and those declaring intent to become same, have right to enter certain coal lands of the U.S.

Sec. 181. Certain mineral deposits on lands owned by the U.S. may be disposed of only to citizens of U.S., and to foreign citizens where reciprocal rights exist.

Sec. 323. Citizens may not be prevented from using patents acquired by the Secretary of Interior under this section.

Sec. 1015. Leases for use of geothermal resources to be issued only to citizens and certain associations and corporations organized under the laws of the U.S.

Title 33:

Sec. 702d-1. Secretary of Army authorized to grant certain easements only to citizens.

Title 42:

Sec. 1869. Only citizens and nationals eligible for certain scientific scholarships.

Sec. 2031. Members of Atomic Energy Commission must be citizens.

Sec. 2133. Issuance of atomic energy licenses to aliens or alien owned or controlled corporation prohibited.

Sec. 2134. Issuance of atomic energy licenses for purposes of medical therapy, etc., to alien owned or controlled corporations prohibited.

Title 43:

Sec. 145. Secretary of Interior empowered to sell certain public

land to citizens.

Sec. 161. Homestead land grants available to citizens and those declaring intent to become same.

Sec. 178. Only citizens may obtain title to certain lands in New Mexico by adverse possession.

Sec. 231. Certain citizen entrymen eligible for optional leave of absence from homestead lands.

Sec. 270. Only citizens eligible for certain homestead rights in Alsaka.

Sec. 272a. Soldiers' and sailors' homestead rights restricted to citizens.

Sec. 315b. Grazing permits available only to citizens and those filing necessary declaration of intent to become same.

Sec. 321. Rights in desert-lands available to citizens and those declaring intent to become same.

Sec. 329. Land patents available

only to citizens.

Sec. 375. Land patents available only to citizen bidders.

Sec. 682c. Leases and sales of public lands may be made only to citizens or to aliens who have filed a declaration of intent to become citizens.

Sec. 687a. Land purchases in Alaska limited to citizens.

Sec. 897. Relief granted to purchasers of patents from railroads when purchasers are citizens or have declared their intention to become same.

Sec. 898. Purchase rights extended only to citizens, and those declaring intent to become same.

Sec. 942-6. Certain rights-of-way in Alaska available only to citizens.

Secs. 956, 966. Rights-of-way through certain public lands available only to citizens.

Sec. 992, et seq. Citizens granted preferred right to file applications for purchase of certain meandered lands.

Sec. 1062. U.S. Attorney had duty to institute civil action on behalf of citizens only for improper closure of public lands.

Sec. 1092. Land patents in Oklahoma available only to citizens.

Sec. 1100. Mineral patents in Oklahoma available only to citizens.

Title 48:

Sec. 1414. Citizens granted exclusive privileges with respect to obtaining and selling the products of certain guano deposits.

Sec. 1501, et seq. Right of aliens to acquire, own, or convey land in U.S. Territories, or U.S. public lands restricted.

Sec. 1509. Aliens ineligible to purchase public land in Hawaii unless they have declared their intent to become citizens.

D. Protection of Vital Services

Title 12:

Sec. 72. Directors of national banking associations must be citizens.

Sec. 614. Directors of banks organized to engage in foreign banking must be citizens.

Sec. 619. Controlling interest in banks engaged in foreign business must be held by citizens.

Sec. 636c. Citizenship required for membership on Federal Farm Credit Board.

Sec. 673. Directors of Federal land banks must be citizens.

Sec. 1427. Directors of Federal home loanbanks must be citizens.

Sec. 1812. Two of the three Directors of the Federal Deposit Insurance Corporation must be citizens.

Title 19:

Sec. 1641. Custom house brokers required to be citizens.

Title 26:

Sec. 7325. Appraisers of seized goods must be citizens.

Title 40:

Sec. 782. Ownership, operation, or control by aliens of certain U.S. long-lines communication facilities in Alaska prohibited.

Title 45:

Sec. 543. Officers and directors of National Railroad Passenger Corporation must be citizens.

Title 46:

Sec. 11. Establishes citizenship requirements with respect to registry of vessels engaged in coastwise trade and mail service contract.

Sec. 13. Foreign built vessels admitted to coastwise trade only if owned by citizens.

Sec. 122. Citizen-owned coasting and fishing vessels not subject to duties.

Sec. 146. Goods exempt from discriminating duty if imported on citizen-owned vessels.

Sec. 221. Officers of U.S. vessels must be citizens.

Sec. 242. Registry as staff officer in U.S. merchant marine limited to citizens.

Sec. 785. Aliens may prosecute an action under the Suits in Admiralty Act only if they establish reciprocity as a jurisdictional prerequisite.

Sec. 834. Secretary of Treasury may deny clearance to vessels which refuse to accept freight of citizen.

Sec. 865. Secretary of Commerce may sell vessels to aliens only if

unable to find a suitable citizen buyer.

Sec. 866. Preferences given to citizens in establishment and operation of certain steamship lines.

Sec. 922. Citizens given preference in obtaining ship mortgages.

Sec. 1126. Only citizens eligible for training in United States Maritime Service.

Sec. 1132. All licensed officers of U.S. documented vessels must be citizens also crew if vessel Government subsidized.

Sec. 1151. Only citizens may apply for vessel construction differential subsidies.

Sec. 1159. Only citizens may apply for aid in construction of new vessels.

Sec. 1160. In order for vessel to be "obsolete" for purposes of purchase

by the Secretary of Commerce under this section, vessel must have been owned by a citizen for three years prior to purchase.

Sec. 1161. Only citizens eligible for certain construction reserve funds for vessels.

Sec. 1171. Only citizens eligible to apply for operating-differential subsidies where vessel to engage in foreign commerce.

Sec. 1177. Only citizens may enter into agreement with Secretary of Commerce to establish capital construction fund.

Sec. 1213. Citizens given preference in award of contracts under this chapter.

Sec. 1283. Only citizens qualify for certain war-risk insurance.

Sec. 1402. Only citizens may apply to Secretary of Interior for fishing vessel construction subsidies.

Title 47:

Sec. 17. Only citizens may own, operate, or control telegraph lines in Alaska.

Sec. 154. Members of Federal Communications Commission must be citizens.

Sec. 222. Consolidation or merger of telegraph carriers, if more than one-fifth of capital stock will be owned, controlled or voted directly or indirectly by aliens as a result, prohibited.

Sec. 303. Aliens generally ineligible for radio station licenses.

Sec. 310. Aliens ineligible for amateur radio station license under certain circumstances.

Sec. 733. Directors and officers of the Communications Satellite Corporation must be citizens.

Sec. 734. Participation by aliens in Communications Satellite Corporation restricted.

Title 49:

Sec. 1304. Only citizens have a public right of freedom of transit through navigable U.S. air space.

Sec. 1321. Members of Civil Aeronautics Board must be citizens.

Secs. 1341, 1342. Administrator and Deputy Administrator of Federal Aviation Administration must be citizens.

Sec. 1401. Only citizens may register aircraft.

III. VOTING, TERRITORIAL OFFICIALS, JURIES & ARTICLE III

A. Voting

Title 42:

Sec. 1971. Voting rights of citizens only protected.

Sec. 1973. Voting rights of citizens may not be denied or abridged on account of race or color.

Sec. 1975. Commission on Civil Rights shall investigate allegations that citizens have been denied voting rights.

Title 48:

Sec. 1405p. Restricts franchise in Virgin Islands to citizens.

Sec. 1542. Franchise in Virgin Islands restricted to citizens.

B. Territorial Officials

Title 48:

Sec. 874. All judicial officials in Puerto Rico must be citizens.

Sec. 892. Resident Commissioner of

Puerto Rico must be a citizen.

Sec. 1422. Governor and Lieutenant Governor of Guam must be citizens.

Sec. 1423f. Members of Guamian legislature must be citizens.

Sec. 1543. All officials of the government of the Virgin Islands must be citizens.

Sec. 1572. Members of Virgin Island legislature must be citizens.

Sec. 1591. Only citizens eligible for election as Governor or Lieutenant Governor of the Virgin Islands.

C. Juries

Title 18:

Sec. 243. Citizens may not be disqualified from jury service on basis of race, color, etc.

Title 28:

Sec. 1861. Only citizens eligible to serve on grand and petit juries in district courts.

Sec. 1862. Citizens may not be excluded from grant or petit jury on account or race, religion, etc.

Sec. 1863. Jury commissions to be composed of citizens only.

*Sec. 1865. Grand or petit jurors in district court must be citizens.

D. Article III

1. Foreign countries:

Title 28:

Sec. 1251(a)(2). Supreme Court has exclusive original jurisdiction of all actions against ambassadors.

Sec. 1251(b)(1). Supreme Court has original but not exclusive jurisdiction of all actions brought by ambassadors, or to which they are parties.

Sec. 1251(b)(3). Supreme Court has original but not exclusive juris-

*Constitutionality upheld in Perkins v. Smith, 370 F.Supp. 134 (D. Md.), appeal pending No. 73-1915.

diction of all actions or proceedings by a State against aliens.

Sec. 1350. District Courts have original jurisdiction in civil actions by aliens only for torts committed in violation of the law of nations or a treaty.

Sec. 1351. District courts have original jurisdiction, exclusive of the courts of the States, of all actions and proceedings against consuls of foreign states.

Sec. 1442(b). Personal action commenced in State court by an alien against any citizen of a State who is a civil officer of the United States and is a non-resident of such State removable to federal district court.

2. Diversity

Title 28:

Sec. 1332. Suits between aliens only do not qualify for diversity

of citizenship under this section.

Sec. 1391. Aliens subject to suit in any district.

IV. MISCELLANEOUS

A. Patriotic and Honorary

Title 16:

Sec. 463, 468(b). Advisory Board on National Parks, Historic Sites, Buildings, and Monuments, and National Trust for Historic Preservation, to be composed of citizens only.

Title 20:

Sec . 72. The five general trustees of the National Gallery of Art must be citizens.

Sec. 77. Certain members of the National Air and Space Museum must be citizens.

Title 36:

Sec. 25. Executive Board of Boy Scouts of America to be composed of citizens.

Sec. 34. Members of National Council of Girl Scouts of America shall be citizens.

Sec. 45. Membership in American Legion restricted to citizens.

Sec. 97. Membership in American War Mothers restricted to citizens.

Sec. 341. Certain citizens designated members of American Society of International Law.

Sec. 426. Members of Corregidor Bataan Memorial Commission must be citizens.

Title 40 :

Sec. 71a. National Capitol Planning Commission to be composed of five citizens, and other designated persons.

Title 42:

Sec. 1922. Only citizens eligible for Department of Justice medals for character and service.

Title 43:

Sec. 364c. Membership on advisory committees to Board on Geographic Names restricted to citizens.

B. Civil Service

Title 13:

Sec. 22. Permanent officers and employees of Bureau of Census must be citizens.

Title 15:

Sec. 1404. Director of National Traffic Safety Bureau shall be citizen.

Title 18:

Sec. 4321. Board of Advisers of Federal Reformatory for Women to be composed of four citizens and others, as designated.

Title 20:

Sec. 46a. Secretary of Smithsonian Institution may employ aliens in a scientific or technical capacity only where no qualified citizen available.

Title 38:

Sec. 4105. Only citizens eligible for appointment to certain

positions in Department of Medicine and Surgery, unless qualified citizens not available (38 U.S.C. 4114).

Title 42:

Sec. 204. Commissioned officers in the Public Health Service must be citizens.

C. Due Process

Title 5:

Sec. 7532. Citizens who have been suspended or removed from certain Government agencies are afforded additional procedural rights in appealing suspension or removal, which rights are denied to aliens.

Title 18:

Sec. 242. Criminal sanctions imposed on one who conspires to injure a citizen in the exercise of certain rights.

Title 28:

Sec. 1872. Issues of fact to be

tried by a jury in all original actions at law against citizens in the Supreme Court.

Title 42:

Sec. 1982. Property rights of citizens protected.

D. Diaz-type Statutes

Title 42:

Sec. 428. Only citizens and aliens admitted for permanent residence and residing in U.S. for five years eligible for certain pension benefits at age 72.

Sec. 1395. Only citizens and aliens admitted for permanent residence and having resided continuously in U.S. for five years eligible for supplementary medical insurance benefits.

Sec. 1396. Citizens may not be excluded from State medical assistance plans.

E. Unclassifiable

Title 18:

App. Sec. 1202(a)(5). Aliens illegally in U.S. are criminally liable for receipt, possession, or transportation of firearms.

Title 20:

Sec. 107a. Secretary of Health, Education and Welfare shall assist blind citizens to obtain concession licenses on Federal and other property.

Title 33:

Sec. 8. Citizens entitled to toll-free use of certain Alabama rivers.